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STATE OF COLORADO
PUBLIC UTILITIES COMM.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07A-003BP-EXT

IN THE MATTER OF THE APPLICATION OF VAIL SUMMIT RESORTS, INC., D/B/A
KEYSTONE RESORT, INC., FOR AUTHORITY TO EXTEND ITS AUTHORITY
UNDER CONTRACT CARRIER PERMIT NO. B-9862

THIRD SUBPOENA REQUEST AND AFFIDAVIT

Intervenor Craig Suwinski hereby requests the Commission issue the attached subpoenas for Mr. Rick Sramek, Ms. Kay Lucy, Mr. Mark Davidson, Esq. and Ms. Michelle Brandt, Esq. for the reasons and purposes specified in the attached Affidavit.

Respectfully submitted this 1st day of October, 2007.



Craig S. Suwinski, *pro se*
53 Last Chance Lane
Keystone, CO 80435-7810
970-262-1088 csuwinski@comcast.net

CERTIFICATE OF SERVICE

I hereby certify that on this 1st of October, 2007, a true and correct copy of the foregoing Third Subpoena Request and Affidavit by mail, postage prepaid and affixed thereto, addressed to the following:

Mark A. Davidson, Esq.
Michele Brandt, Esq.
Dufford & Brown.
1700 Broadway, Suite 2100
Denver CO 80290-2101
mbrandt@duffordbrown.com
mdavidson@duffordbrown.com

Ellis E. Rosenzweig, Esq.
Corporate Counsel
Vail Resorts Management Company
390 Interlocken Crescent, Suite 1000
Broomfield, CO 80021
erosenzweig@vailresorts.com



Craig S. Suwinski, *pro se*
53 Last Chance Lane
Keystone, CO 80435
970-262-1088

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07A-003BP-EXT

**IN THE MATTER OF THE APPLICATION OF VAIL SUMMIT RESORTS, INC.,
D/B/A KEYSTONE RESORT, INC., FOR AUTHORITY TO EXTEND ITS AUTHORITY
UNDER CONTRACT CARRIER PERMIT NO. B-9862**

AFFIDAVIT OF CRAIG S. SUWINSKI

I, Craig S. Suwinski, owner of a single family home at 53 Last Chance Lane, Keystone CO 80435, in which I reside for a substantial portion of the year, and rent on a regular basis during the ski season for considerable income, herby affirm that I am a resident of the State of Colorado, having established my residence in Colorado in the mid-1990s.

During the time I have owned 53 Last Chance Lane, and prior to the conversion of Vail's transportation service from common carrier to contract carrier status, my rental (and other guests), and I had utilized the transportation services of Vail Summit Resorts, Inc. d/b/a Keystone Resort, Inc. (hereinafter "Vail") on numerous occasions. Transportation services within the resort are extremely difficult if the Keystone transportation system is not utilized.

1. **Mr. Rick Sramek, Vice-President Mountain Operations, Breckenridge Resort;** Breckenridge Resort, Box 1058, Breckenridge, CO 80424; 970-453-5000 or 800-789-7669; Residence: 1212 Brooks Hill Dr, Breckenridge, CO 80424, 970-453-2064. Mr. Sramek has knowledge of the operations of Breckenridge Resort's transportation system (see Attachment's 1 and 2 hereto), and can testify to the issue raised by Mr. Thomas Breslin in his Direct Testimony regarding other ski resorts in Colorado not conducting (regulated) motor carrier operations, common or contract. While there is no Commission record that Breckenridge has regulated carrier status, Mr. Breslin, by inference, has testified that Keystone is unique in the providing of transportation services in Colorado. Further the characterization that Colorado ski resorts do not provide transportation services inherent in his testimony that: "the situations in Breckenridge, Vail and Avon which all provide free transportation service during ski season within the town and to and from outlying parking facilities to accommodate the transportation needs of residents, guests and day skiers" mischaracterizes the situation, at least as it relates to Vail Resort's Breckenridge transportation services. In a conversation with Mr. Jim Benkelman, Breckenridge Transit Manager (970-547-3153) on October 1, 2007, Mr. Benkelman stated that between the two transportation systems, the towns and the resorts, they move about 1.6 / 1.7 million passengers per year, with the resort having been as high as 1.2 million passengers of the total. Mr. Sramek's testimony is being sought to correct the impression on the record created by Mr. Breslin (See, Breslin Direct Testimony, Page 3, lines 7 thru Page 4, line 6). Since Mr. Breslin

opened the door on this line of inquiry with his Direct Testimony about Breckenridge's transportations situation, Suwinski should be allowed to pursue it.

2. **Ms. Lucy Kay, Chief Operating Officer, Breckenridge Ski Resort;** Breckenridge Resort, Box 1058, Breckenridge, CO 80424; 970-453-5000 or 800-789-7669. Ms. Kay has knowledge of the operations of Breckenridge Resort's transportation system (see Attachment \s 1 and 2 hereto), and can testify to the issue raised by Mr. Thomas Breslin in his Direct Testimony regarding other ski resorts in Colorado conducting (regulated) motor carrier operations, common or contract. While there is no Commission record that Breckenridge has regulated carrier status, Mr. Breslin, by inference, has testified that Keystone is unique in the providing of transportation services in Colorado. Further the characterization that Colorado ski resorts do not provide transportation services inherent in his testimony that: "the situations in Breckenridge, Vail and Avon which all provide free transportation service during ski season within the town and to and from outlying parking facilities to accommodate the transportation needs of residents, guests and day skiers" mischaracterizes the situation, at least as it relates to Vail Resort's Breckenridge transportation services. In a conversation with Mr. Jim Benkelman, Breckenridge Transit Manager (970-547-3153) on October 1, 2007, Mr. Benkelman stated that between the two transportation systems, the towns and the resorts, they move about 1.6 / 1.7 million passengers per year, with the resort having been as high as 1.2 million passengers of the total. Ms. Kay's testimony is being sought to correct the impression on the record created by Mr. Breslin (See, Breslin Direct Testimony, Page 3, lines 7 thru Page 4, line 6). Since Mr. Breslin opened the door on this line of inquiry with his Direct Testimony about Breckenridge's transportations situation, Suwinski should be allowed to pursue it.

3. **Mr. Mark Davidson, Dufford & Brown,** 1700 Broadway, Suite 2100, Denver, CO 80290, 303-861-8013. Mr. Davidson's testimony is required to offset the impressions left by Mr. Breslin's direct testimony regarding Intervenor (See, Breslin Direct Testimony, Page 17, line 17 thru Page 19. Lime 18). Mr. Davidson, Ms. Brandt and Intervenor had a discussion during a recess in a combined Complaint Docket in approximately October, 2005 wherein Suwinski had failed to notice Vail counsel of the request for a Subpoena. Suwinski stated that "I'm tired of all this". Is there a way to reach some accommodation about all these dockets? After Mr. Davidson made a phone call, there was an agreement that Suwinski would withdraw his complaints. Further, as Suwinski offered, Suwinski would make no further complaints, formal or informal, for a period of one year while Vail "got its act together". While Suwinski did notify Mr. Breslin of several subsequent observations of possible violations, and despite never receiving any response form them, Suwinski has not subsequently filed any complaint with the Commission.

4. **Ms. Michelle Brandt, Dufford & Brown,** 1700 Broadway, Suite 2100, Denver, CO 80290, 303, 303-861-8013. Ms. Brandt's testimony is required to offset the impressions left by Mr. Breslin's direct testimony regarding Intervenor (See, Breslin Direct Testimony, Page 17, line 17 thru Page 19. Lime 18). Mr. Davidson, Ms. Brandt and Intervenor ahs a discussion during a recess in a combine d Complaint Docket in approximately October, 2005 wherein Suwinski had failed to notice Vail counsel of the request for a Subpoena. Suwinski stated that "I'm tired of all this". Is there a way to reach some accommodation about all these dockets? After Mr. Davidson made a phone call, there was an agreement that Suwinski would withdraw his complaints. Further, as Suwinski offered, Suwinski would make no further complaints, formal or informal.

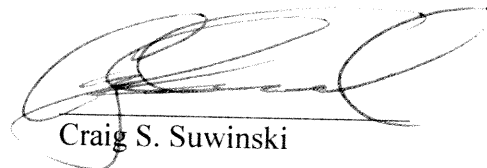
for a period of one year while Vail "got its act together". While Suwinski did notify Mr. Breslin of several subsequent observations of possible violations, and despite never receiving any response from them, Suwinski has not subsequently filed any complaint with the Commission.

If Mr. Davidson and Ms. Brandt are willing to place their written testimony in the record regarding the referenced conversation between them and myself, and it accurately reflects Intervenor's recollections as stated above, there would be no need to call them during the hearing. Their testimony is sought tentatively since there is no desire to disqualify them, only to correct the impression on the record of Mr. Breslin's Direct Testimony. The Colorado Supreme Court has affirmed that opposing counsel may be subpoenaed upon a showing that, that the evidence sought to be elicited from the lawyer will likely be admissible at trial under the controlling rules of evidence, and that there is a compelling need for such evidence, which need cannot be satisfied by some other source. *Taylor v. Grogan*, 900 P.2d 60, 62 (Colo. 1995). The only participants to the discussion referenced were Davidson, Brandt and Suwinski, and their testimony is necessary to offset the impression left by Mr. Breslin's Direct Testimony (Page 17, line 17 thru Page 19. Lime 18).

Further, if Vail is willing to provide one of the two Breckenridge witnesses, and stipulate that the one witness provided has knowledge of the Breckenridge Resort transportation system, the number of passengers served, its route structure, and its financing, the second witness would not be needed. Mr. Robert Moore of Breckenridge Resort's parking and transportation department may also be a suitable alternative witness if Vail would submit his duties and responsibilities to Suwinski as part of an agreement have one knowledgeable Breckenridge employee testify.

I therefore request the issuance of the four attached Subpoenas for the individuals named above to appear at the above Docket's hearing.

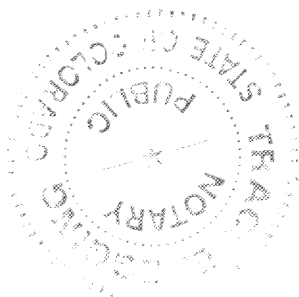
Dated this 1st day of October, 2007.

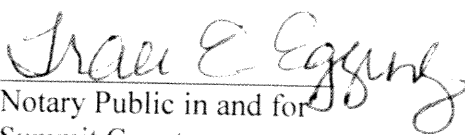


Craig S. Suwinski

STATE OF COLORADO)
COUNTY OF SUMMIT)

On this 1st day of October, 2007, before me, the undersigned Notary Public in and for the County of Summit, State of Colorado, personally appeared Craig S. Suwinski, to me known to be the person named above and who executed the forgoing Affidavit, and acknowledged that he executed the same as his voluntary act and deed.




Notary Public in and for
Summit County,
State of Colorado

My Commission Expires 04 15 2015
150 U.S. Hwy. B
Silverthorne, CO 80498

**ATTACHMENT 1
PREVIOUSLY SUBMITTED AS REBUTTAL EXHIBIT CSS-33**

Funds for Keystone buses up in the air

BY NICOLE FORMOSA
summit daily news
August 18, 2005

KEYSTONE - An attempt by Keystone Resort to require homeowners to chip in for its villagewide bus system may not fly with the Colorado Public Utilities Commission (PUC), despite a signed agreement from 39 condominium associations in Keystone.

As a result, it remains unknown how the resort's \$1.8 million bus system will be funded in the future. In the past, Keystone Resort paid for two-thirds of the cost and homeowners paid for one-third.

Last week, the PUC upheld an administrative law judge's denial of Keystone Resort's application for an extension of its contract carrier permit that would have allowed the resort to charge 46 condominium and homeowners' associations \$150 per bedroom annually to help augment its bus system.

For the money, homeowners and guests would have had access to scheduled bus service during peak seasons and on-call service during slower months.

At least 39 of the 46 associations signed transportation agreements with the resort for the service.

The commission's decision was based on the point that it's too difficult to know whether people paid the fee before they get on a bus, said PUC spokesperson Barbara Fernandez. Resort guests generally use the bus system to get to the lifts and around the resort - a "common" carrier service, she added.

Contract carrier status would have allowed the resort to charge the approximately 2,000 homeowners for service, but to be awarded that status, Keystone had to prove that its bus service is specialized and tailored to customers' distinct needs.

Craig Suwinski and Randall Seegers - both Keystone homeowners - testified against Keystone at a May 2005 hearing, saying it didn't meet requirements to be a contract carrier.

In June, administrative law judge Mana L. Jennings-Fader agreed with Seegers and Suwinski, finding that Keystone was not providing exclusive service to the contracting associations because it uses the same drivers, vehicles, schedules and routes for all scheduled services.

The PUC upheld that decision in a meeting last week.

Keystone plans to file an appeal, said resort spokesperson Amy Kemp. The resort has 20 days to file it following the commissioners' written decision, which is expected in the next two weeks.

Kemp declined to comment further.

"Since this is an ongoing active matter of litigation, there's not much more we can say about it," Kemp said.

Keystone Citizens League president Linda Clem said Keystone homeowners continue to hope for a "fair and equitable" solution to who should pay for the bus service.

She suggested possibly instituting a \$1 per-ride fee or incorporating a fee into ski passes instead of charging homeowners.

"We all know from the post office, the Fourth of July concerts and things like that, that Keystone is in a bottom-line mentality mode and anything they can pass off to the homeowners they're going to try and do," Clem said.

The resort's post office closed this summer due to reduced funding from the resort, and in August 2004, the resort canceled its free Fourth of July National Repertory Orchestra concert that had been a staple in the community for 20 years.

Breckenridge Resort, which, like Keystone, is owned by Vail Resorts, has a transportation network that serves more than one million people per year and is paid for solely by the resort, said Rick Sramek, vice president of resort operations in Breckenridge. (Emphasis added)

Copper Mountain Resort also runs a bus system that is paid for through a resortwide surcharge that functions much like a sales tax.

In 1995, Keystone Resort began charging River Run homeowners a \$150 per-room annual fee. Some owners were charged and others were not.

The PUC fined the company \$12,000 last year for the practice, saying its transportation operations violated the terms of the ski company's certificate.

The resort declined to return payments to three homeowners' associations that requested a refund.

Nicole Formosa can be reached at (970) 668-3998 ext. 229, or at nformosa@summitdaily.com.

<http://www.summitdaily.com/article/20050818/NEWS/108180042>

ATTACHMENT 2

Positive Potential Changes for 2006

- ⌚ The recommended changes are minor in nature and not intended to change the overall philosophy of the routes
- ⌚ All Town buses will continue to start and stop at Breckenridge Station with at least 30 minute frequency
- ⌚ Route timing will change slightly to improve the on-time percentages
- ⌚ Transfers with the Summit Stage will continue to take place at the top and bottom of the hour
- ⌚ **Continued positive coordination between the Town and Ski Resort on all routes** *(Emphasis added)*

<http://www.townofbreckenridge.com/index.cfm?d=standard&b=1&c=8&s=134&p=6748>

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

)
IN THE MATTER OF THE APPLICATION)
OF VAIL SUMMIT RESORTS, INC., D/B/A)
KEYSTONE RESORT, INC., FOR) DOCKET NO. 07A-003BP-EXT
AUTHORITY TO EXTEND ITS AUTHORITY)
UNDER CONTRACT CARRIER PERMIT)
NO. B-9862)

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF COLORADO

TO: **Lucy Kay, Chief Operating Officer, Breckenridge Ski Resort;** Breckenridge
Resort, Box 1058, Breckenridge, CO 80424; 970-453-5000 or 800-789-7669.

GREETINGS
WE COMMAND YOU THAT ALL AND SINGULAR BUSINESS AND EXCUSES BEING LAID ASIDE, YOU
APPEAR AND ATTEND BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO AT A HEARING OF THE COMMISSION

TO BE HELD AT THE HOUR OF 10:30 AM, ON THE 11th DAY OF October, 2007.

AT THE Colorado Public Utilities Commission, 1560 Broadway, Denver, CO, 80202, Suite 250,
Hearing Room "B", THEN AND THERE TO TESTIFY IN THE ABOVE ENTITLED MATTER,
AND TO BRING TO THE HEARING THE FOLLOWING:

All budgets and material related to Breckenridge Ski Resort, or any Vial affiliated company, providing
transportation services (busses, and shuttles) to Breckenridge Resort guests and employees (to include internal
budgetary allocations or charges), of any Breckenridge division, departments or sections' (including the
Mountain Operating Division) use and payment for Breckenridge Resort Transportation Services for the six
month period prior to January 3, 2007.

ISSUANCE OF THIS SUBPOENA DUCES TECUM HAS BEEN REQUESTED BY: Craig Suwinski,
Intervenor in the above referenced Docket.

BY ORDER OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO WITNESS MY
HAND AND THE SEAL OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,
AT DENVER, COLORADO,

THIS _____ DAY OF _____, A.D. 20_____.

(SEAL)

Administrative Law Judge

SEE REVERSE SIDE FOR RETURN OF SERVICE

STATE OF COLORADO)
)
COUNTY OF _____)SS.
)

The undersigned states that he has duly served the within Subpoena to Testify by personally handing a copy of said Subpoena to

at _____
on the _____ day of _____, 20____, at _____ o'clock (A.M.)(P.M.)

Subscribed and sworn to before me this _____ day of _____, 20____

My Commission Expires:

(SEAL) _____ Notary Public

SHERIFF'S RETURN:

STATE OF COLORADO)
)
COUNTY OF _____)SS.
)

I do hereby certify that I have duly served the within Subpoena to Testify by personally handing a copy of said Subpoena

to _____

at _____
on the _____ day of _____, 20____ at _____ o'clock (A.M.)(P.M.)

WAIVER OF SERVICE:

STATE OF COLORADO)
)
COUNTY OF _____)SS.
)

I, _____, state that I am over eighteen years of age, that I have received a copy of the within Subpoena to Testify and that I waive service thereof.

Subscribed before me this _____ day of _____, 20____

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

)
IN THE MATTER OF THE APPLICATION)
OF VAIL SUMMIT RESORTS, INC., D/B/A)
KEYSTONE RESORT, INC., FOR) DOCKET NO. 07A-003BP-EXT
AUTHORITY TO EXTEND ITS AUTHORITY)
UNDER CONTRACT CARRIER PERMIT)
NO. B-9862)

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF COLORADO

TO: **RICK SRAMEK, Vice-President Mountain Operations, Breckenridge Resort;** Breckenridge Resort, Box 1058, Breckenridge, CO 80424; 970-453-5000 or 800-789-7669; Residence: 1212 Brooks Hill Dr, Breckenridge, CO 80424, 970-453-2064

GREETINGS
WE COMMAND YOU THAT ALL AND SINGULAR BUSINESS AND EXCUSES BEING LAID ASIDE, YOU APPEAR AND ATTEND BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO AT A HEARING OF THE COMMISSION

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AT THE Colorado Public Utilities Commission, 1560 Broadway, Denver, CO, 80202, Suite 250, Hearing Room "B", THEN AND THERE TO TESTIFY IN THE ABOVE ENTITLED MATTER, AND TO BRING TO THE HEARING THE FOLLOWING:

All budgets and material related to Breckenridge Ski Resort, or any Vail affiliated company, providing transportation services (busses, and shuttles) to Breckenridge Resort guests and employees (to include internal budgetary allocations or charges), of any Breckenridge division, departments or sections' (including the Mountain Operating Division) use and payment for Breckenridge Resort Transportation Services for the period six months prior to January 2, 2007.

ISSUANCE OF THIS SUBPOENA DUCES TECUM HAS BEEN REQUESTED BY: Craig Suwinski, Intervenor in the above referenced Docket.

BY ORDER OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO WITNESS MY HAND AND THE SEAL OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO, AT DENVER, COLORADO,

THIS _____ DAY OF _____, A.D. 20_____.

(SEAL)

Administrative Law Judge

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STATE OF COLORADO)
)
)SS.
COUNTY OF _____)

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My Commission Expires:

(SEAL) Notary Public

SHERIFF'S RETURN:

STATE OF COLORADO)
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)SS.
COUNTY OF _____)

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to _____

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STATE OF COLORADO)
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)SS.
COUNTY OF _____)

I, _____, state that I am over eighteen years of age, that I have received a copy of the within Subpoena to Testify and that I waive service thereof.

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AUTHORITY UNDER CONTRACT CARRIER PERMIT NO. B-9862**

SUBPOENA TO TESTIFY

THE PEOPLE OF THE STATE OF COLORADO
TO:

Ms. Michelle Brandt, Dufford & Brown, 1700 Broadway, Suite 2100, Denver,
CO 80290, 303, 303-861-8013.

GREETINGS
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Craig S. Suwinski, Permissive Intervenor

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AT DENVER, COLORADO,

THIS _____ DAY OF _____, A.D. 20____.

(SEAL)

Administrative Law Judge

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STATE OF COLORADO)
)SS.
COUNTY OF _____)

The undersigned states that he has duly served the within Subpoena Duces Tecum by personally handing copy of said Subpoena Duces Tecum to

at _____
on the _____ day of _____, 20____, at _____ o'clock (A.M.)(P.M.)

Subscribed and sworn to before me this _____ day of _____, 20____

My Commission Expires:

(SEAL) _____ Notary Public

SHERIFF'S RETURN:

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COUNTY OF _____)

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)SS.
COUNTY OF _____)

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AT DENVER, COLORADO,

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(SEAL)

Administrative Law Judge

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)SS.
COUNTY OF _____)

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at _____

on the _____ day of _____ 20____, at _____ o'clock (A.M.)(P.M.)

Subscribed and sworn to before me this _____ day of _____, 20____

My Commission Expires:

(SEAL)

Notary Public

SHERIFF'S RETURN:

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)SS.
COUNTY OF _____)

I do hereby certify that I have duly served the within Subpoena Duces Tecum by personally handing a copy of said Subpoena Duces Tecum to

at _____

on the _____ day of _____ 20____ at _____ o'clock (A.M.)(P.M.)

WAIVER OF SERVICE:

STATE OF COLORADO)
)SS.
COUNTY OF _____)

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Subscribed before me this _____ day of _____, 20____
